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EXAMINER	
VIZVARY, GERALD C	
ART UNIT	PAPER NUMBER
3696	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/523,583	CHAPPUIS, PIERRE	
	Examiner	Art Unit	
	GERALD C. VIZVARY	3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 July 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-15,17 and 18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-15, 17 & 18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. In the amendment filed 7/9/2008, the following has occurred: Claims 1, 13 & 14 have been amended. Claims 2, 16, 19 & 20 are cancelled. Now, claims 1, 3-15, 17 & 18 are presented for examination.

2. Following Applicant's amendments of claims 1, 13 & 14, the rejections under 35 USC § 112 are hereby withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3-12 & 15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz 6,078,908 in view of Beatty, US 5,675,630A.

As per claim 1 (Currently Amended) Schmitz 6,078,908 discloses a method for the identification of a user and generation of an action authorization for the user with the aid of, ~~using less than four devices, said devices comprise~~ a mobile terminal and an

identification module, whereby the action is an access authorization or an electronic ticket, comprising the following steps:

b) transmitting the action authorization request together with an identification code from the mobile terminal to the identification module, whereby the action authorization request indicates the type of action and at least one parameter of the action authorization requested ("The authorization signal can be transmitted from the data input apparatus to the authorization computer along the first transmission path. Acceptance of the authorization signal during verification of the validity of the authorization signal by the authorizing computer can be limited to a predefined number of times, to a predefined user time, depending on a predefined number of data files being transmitted, or depending on a predefined size value of data files being transmitted." Schmitz 6,078,908, col. 1, line 63-col. 2 line 4),

c) checking by the identification module as to whether the action authorization with the at least one parameter is permissible for the identification code, and, if it is permissible: ("The authorization computer checks and verifies now the congruence and agreement between all valid transaction authorization numbers TANs or comparable passwords previously given out by the authorizing computer" Schmitz 6,078,908, col. 3 line 36-40)

d) generating an action code for the action authorization requested by the identification module, whereby the action code records, in relation to at least one third location, a clearance for the action with the at least one parameter by the identification module ("and the authorization computer allows a release of the data flow between the data

input apparatus and a receiver unit after this checking of the authorization". Schmitz 6,078,908, col. 3 lines 40-42),

e) transmitting the action code wirelessly and directly from the identification module to the mobile terminal ("The authorization computer checks and verifies now the congruence and agreement between all valid transaction authorization numbers TANs or comparable passwords previously given out by the authorizing computer. Schmitz 6,078,908, col. 3 lines 36-40), & ("Now, data can be transmitted from the data input apparatus to the receiver unit and vice versa, for example by full duplex, after a connection authorized in the above described manner has been established." Schmitz 6,078,908, col. 3 lines 50-53), and

f) displaying the action code on a display of the mobile terminal. ("This receiver can be for example a wireless receiver with a display or a monitor such as for example a mobile or cellular phone or a pager." Schmitz 6,078,908, col. 3 lines 7-9)

g) issuing an action authorization by a server, wherein said server functions as a terminal of an application operator, and wherein a user sends the action code via the Internet to said server. ("The present invention provides for a method for the authorization of data transmission systems. A qualifying identification of a user is entered into a data input apparatus. The qualifying identification and a request for an authorization signal is transmitted from the data input apparatus to an authorization computer along a first transmission path. The authorization signal is established in the authorization computer." Schmitz 6,078,908 col. 1, lines 45-52)

Schmitz fails to explicitly show selecting a desired action type by menu control on the mobile terminal

Beatty shows selecting a desired action type by menu control on the mobile terminal ("All software may be driven by function keys on the cellular phone or via the computer keyboard which directs the user through the options in a logical, orderly fashion. The application software used for selecting, editing, and configuring new and existing NAMs [Number Assignment Modules], phone books, and speed dial directories is typically menu-driven." Beatty, US 5,675,630A col. 5, lines 11-13)

It would have been obvious to one of ordinary skill in the art at the time of the invention to include menu driven control as taught by Beatty, US 5,675,630 in the system of Schmitz 6,078,908, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

2. (Cancelled)

As per claim 3 (Previously Presented), Schmitz 6,078,908 discloses a method according to claim 1, wherein the validity of the action code is time-limited and/or the maximum number of action authorizations for which the action code is valid is limited. ("However, other limitations such as the user time and/or the number or the size of the data files to be transmitted relating are also conceivable for use in determining the

validity of the transaction authorization number or of the comparable password." Schmitz 6,078,908, col. 3 lines 45-49)

As per claim 4 (Previously Presented), Schmitz 6,078,908 discloses a method according to claim 1, wherein in step a), a personal identification number of the user is additionally sent by the mobile terminal to the identification module. ("The authorized user can enter the thus transmitted transaction authorization number or the comparable password manually into his/her data input apparatus and send the transaction authorization number TAN again to the authorization computer." Schmitz 6,078,908, col. 3 lines 29-33)

As per claim 5 (Previously Presented), Schmitz 6,078,908 discloses a method according to claim 1 wherein a communication that takes place between the mobile terminal and the identification module is at least partially encoded. ("It is clear that these data can also be encrypted or encoded first and then transmitted for obtaining additional security." Schmitz 6,078,908, col. 3 lines 54-55)

As per claim 6 (Previously Presented), Schmitz 6,078,908 discloses a method according to claim 1 wherein a communication between the mobile terminal and the identification module is carried out at least partially by means of a data channel. ("An alphanumeric or only numeric transaction authorization number TAN, or a comparable password, is calculated or read from a data file based on a random number generator in

this authorization computer. This transaction authorization number TAN, or a similar password, is transmitted to a receiver by the authorizing computer through another transmission path disposed parallel to the existing connection with the data-input apparatus." Schmitz 6,078,908, col. 3 lines 50-53)

As per claim 7 (Previously Presented), Schmitz 6,078,908 discloses a method according to claim 1 wherein in a communication between the mobile terminal and the identification module data is used which is read out from a data carrier in the mobile terminal. ("An alphanumeric or only numeric transaction authorization number TAN, or a comparable password, is calculated or read from a data file based on a random number generator in this authorization computer. This transaction authorization number TAN, or a similar password, is transmitted to a receiver by the authorizing computer through another transmission path disposed parallel to the existing connection with the data-input apparatus." Schmitz 6,078,908, col. 3 lines 50-53)

As per claim 8 (Previously Presented), Schmitz 6,078,908 discloses a method according to claim i wherein in step a) a plausibility check is additionally carried out by sending network information to the identification module which relates to the network used for the transmission in step a). ("The security of this system is based on the fact that a data transmission from the data input apparatus to the receiver unit has to be released and turned on by the authorization computer only in case of an authorization of the apparatus. This is accomplished by the employment of separate transmission paths

between the data input apparatus and the authorization computer on the one hand, and between the authorization computer and the receiver unit on the other hand. The present invention is insofar distinguished from call-back systems, where only one checking occurs between the data input apparatus and the authorization computer." Schmitz 6,078,908, col. 4 lines 1-7)

As per claim 9 (Previously Presented), Schmitz 6,078,908 discloses a method according to claim 8, wherein a network information containing details relating to a provider, a radio cell, or combinations thereof is used in step a). ("The security of this system is based on the fact that a data transmission from the data input apparatus to the receiver unit has to be released and turned on by the authorization computer only in case of an authorization of the apparatus. This is accomplished by the employment of separate transmission paths between the data input apparatus and the authorization computer on the one hand, and between the authorization computer and the receiver unit on the other hand. The present invention is insofar distinguished from call-back systems, where only one checking occurs between the data input apparatus and the authorization computer." Schmitz 6,078,908, col. 3 line 64 to col. 4 line 14)

As per claim 10 (Previously Presented), Schmitz 6,078,908 discloses a method according to claim 1 wherein the action code is shown on the display of the mobile terminal. ("Further encoding mechanisms can be dispensed with according to the present invention if one employs a mobile or cellular phone, in particular a global

system for mobile communication or cellular phone, instead of a pager based on the encoding of the respective transmission technique. In this case, the display of the transaction authorization number or of the comparable password is performed on the display of the mobile or cellular phone." Schmitz 6,078,908, col. 4 lines 49-56)

As per claim 11 (Previously Presented), Schmitz 6,078,908 discloses a method according to claim 1 wherein information relating to the action to which step a) relates is deposited in a data carrier of the mobile terminal. ("An alphanumeric or only numeric transaction authorization number TAN, or a comparable password, is calculated or read from a data file based on a random number generator in this authorization computer. This transaction authorization number TAN, or a similar password, is transmitted to a receiver by the authorizing computer through another transmission path disposed parallel to the existing connection with the data-input apparatus." Schmitz 6,078,908, col. 2 line 65-col. 3 line 5) and thereby deposits the action information into the mobile terminal.

As per claim 12 (Previously Presented), Schmitz 6,078,908 discloses a method according to claim 10, wherein information from the mobile terminal is read out, transferred to another device, or combinations thereof. ("The security of this system is based on the fact that a data transmission from the data input apparatus to the receiver unit has to be released and turned on by the authorization computer only in case of an authorization of the apparatus. This is accomplished by the employment of separate

transmission paths between the data input apparatus and the authorization computer on the one hand, and between the authorization computer and the receiver unit on the other hand. The present invention is insofar distinguished from call-back systems, where only one checking occurs between the data input apparatus and the authorization computer." Schmitz 6,078,908, col. 4 lines 1-7)

As per claim 15 (Previously Presented), Schmitz 6,078,908 discloses a mobile terminal, programmed to carry out a method according to claim 1. ("The authorization computer 2 and the receiver unit 4 can be furnished by a single computer. In this case, a first access is performed to a data processing program, which performs the authorization process, including generation and transmission of the transaction authorization number TAN, in the manner precedingly described." Schmitz 6,078,908, col. 9 lines 9-14) the data processing program thus shows the programming to carry out the method of claim 1.

16. (Canceled)

17. (Previously Presented) A mobile terminal, programmed to carry out a method according to claim 13. ("The authorization computer 2 and the receiver unit 4 can be furnished by a single computer. In this case, a first access is performed to a data processing program, which performs the authorization process, including generation

and transmission of the transaction authorization number TAN, in the manner precedingly described." Schmitz 6,078,908, col. 9 lines 9-14)

18. (Previously Presented) A mobile terminal, programmed to carry out a method according to claim 14. ("The authorization computer 2 and the receiver unit 4 can be furnished by a single computer. In this case, a first access is performed to a data processing program, which performs the authorization process, including generation and transmission of the transaction authorization number TAN, in the manner precedingly described." Schmitz 6,078,908 col. 9 lines 9-14)

19. (Canceled)

20. (Canceled)

Claim Rejections - 35 USC § 103

5. Claims 13 & 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz 6,078,908 in view of Wright (US 2001/0027449 A1).

As per claim 13 (Currently Amended), Schmitz 6,078,908 discloses a method for the handling of a payment procedure between a user of a mobile terminal and a payment recipient with the aid of, ~~using less than four devices, said devices comprise~~ the mobile terminal, an identification module, and a payment terminal of the payment recipient, comprising the following steps:

b) checking by the identification module as to whether a payment authorization for the identification code with at least one parameter is permissible ("The authorization computer checks and verifies now the congruence and agreement between all valid transaction authorization numbers TANs or comparable passwords previously given out by the authorizing computer" Schmitz 6,078,908, col. 3 line 36-40), and, if it is permissible: :

c) generating a transaction code for the payment procedure requested by the identification module ("and the authorization computer allows a release of the data flow between the data input apparatus and a receiver unit after this checking of the authorization". Schmitz 6,078,908, col. 3 lines 40-42),

d) transmitting the transaction code from the identification module to the mobile terminal and to the payment terminal, whereby the transaction code displays in relation to the payment terminal the fact that the identified user is entitled to carry out the payment procedure specified by the parameter. ("The authorization computer checks and verifies now the congruence and agreement between all valid transaction authorization numbers TANs or comparable passwords previously given out by the authorizing computer. Schmitz 6,078,908, col. 3 lines 36-40)("Now, data can be transmitted from the data input apparatus to the receiver unit and vice versa, for example by full duplex, after a connection authorized in the above described manner has been established." Schmitz 6,078,908, col. 3 lines 50-53)

Schmitz fails to explicitly teach transmitting an authorization request for the payment procedure [[and]] an identification code and a maximum amount for a payment as a

payment framework from the mobile terminal to the identification module, whereby the authorization request indicates parameters of a payment authorization requested.

Wright (US 2001/0027449 A1) teaches "In one embodiment, the IICSP acts as financial intermediary between the consumer and a service provider by including one or more software components to effect payment charging and collection. For example, the PC software component gathers credit or debit card information from the consumer and submits the same to the proper payment processing centers to process the charge at the end of the billing period for the consumer."

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a payment framework as taught by Wright (US 2001/0027449 A1) in the system of Schmitz US 6,078,908, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 14 (Currently Amended), Schmitz 6,078,908 discloses a method for the handling of a payment procedure between a user of a mobile terminal and a payment recipient with the aid of, ~~using less than four devices, said devices comprise~~ the mobile terminal, an identification module, and a payment terminal of the payment recipient, whereby the communication between the mobile terminal, the identification module and the payment terminal is carried out via an air interface, having a first phase comprising the following steps:

a2) checking by the identification module as to whether an authorization for the identification code is permissible ("The authorization computer checks and verifies now the congruence and agreement between all valid transaction authorization numbers TANs or comparable passwords previously given out by the authorizing computer" Schmitz 6,078,908, col. 3 line 36-40), and, if it is permissible:

a3) generating a transaction code for the payment procedure requested by the identification module ("and the authorization computer allows a release of the data flow between the data input apparatus and a receiver unit after this checking of the authorization". Schmitz 6,078,908, col. 3 lines 40-42),

a4) transmitting the transaction code from the identification module to the payment terminal and directly to the mobile terminal, and transmitting the payment framework from the identification module to the payment terminal ("The authorization computer checks and verifies now the congruence and agreement between all valid transaction authorization numbers TANs or comparable passwords previously given out by the authorizing computer. Schmitz 6,078,908, col. 3 lines 36-40)("Now, data can be transmitted from the data input apparatus to the receiver unit and vice versa, for example by full duplex, after a connection authorized in the above described manner has been established." Schmitz 6,078,908, col. 3 lines 50-53), further comprises a phase following in time with the following step:

b1) concluding the payment procedure by the transmission or input of a code into the payment terminal, as a result of which the payment procedure is concluded. ("The transaction authorization number TAN or the comparable password can be a one-time

usable transaction authorization number TAN or a one time usable password. The validity of the transaction authorization number TAN or of the comparable password can be limited to a predefined user time. The validity of the transaction authorization number TAN or of the comparable password can be dependent on a predefined number of the transmitted data files or on a predefined size value of the transmitted data files. Schmitz 6,078,908, col. 7 lines 16-25)

Schmitz 6,078,908 fails to explicitly teach transmitting an authorization request for the payment procedure, an identification code and a maximum amount for a payment as a payment framework from the mobile terminal to the identification module.

Wright (US 2001/0027449 A1) teaches "In one embodiment, the IICSP acts as financial intermediary between the consumer and a service provider by including one or more software components to effect payment charging and collection. For example, the PC software component gathers credit or debit card information from the consumer and submits the same to the proper payment processing centers to process the charge at the end of the billing period for the consumer."

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a payment framework as taught by Wright (US 2001/0027449 A1) in the system of Schmitz US 6,078,908, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Response to Arguments

6. In the remarks filed on 7/9/2008, Applicant argues that

(1) Schmitz is silent about the user sending the action code via the Internet to said server.

(2) The server might be reading upon the "authorization computer 2". This authorization computer 2 is described in detail by Schmitz but at no point in the reference is the authorization computer integrated with the application operator.

(3) A prima facie case of obviousness requires that the combination of references fully disclose each and every feature of the claimed invention.

(4) Neither Schmitz nor Wright discloses transmitting a maximum amount for a payment as a payment framework.

(5) Because the cited references do not fully disclose each and every feature of the claimed invention, Applicant respectfully asserts that both claims 14 and 13 as amended are patentable over Schmitz in view of Wright.

In response to applicant's argument **(1)**, Schmitz discloses "The present invention can be universally employed in the region of data transmission systems. This holds for example also for the Internet and intranets, local area networks LAN, wide area networks WAN, etc." (Schmitz US 6,078,908 col. 5, lines 3-6)

In response to argument **(2)**, Schmitz discloses "A qualifying identification of a user is entered into a data input apparatus. The qualifying identification and a request for an authorization signal is transmitted from the data input apparatus to an authorization computer along a first transmission path. The authorization signal is established in the authorization computer. The authorization signal is sent from the authorization computer to a monitor along a second transmission path different as compared to the first transmission path. The authorization signal at the monitor is read by the user. The authorization signal is entered into the data input apparatus. The authorization signal is transmitted from the data input apparatus to the authorization computer. The validity of the authorization signal is verified in the authorization computer. A connection is established between the data input apparatus and a receiver unit upon verification of the validity of the authorization signal." (Schmitz US 6,078,908 col. 1, lines 45-62). Examiner has relied upon Schmitz for the teaching of an application server working in tandem with the application operator. This may, but need not be integrated into the same device. See in re *Nerwin v. Erlichman*, 168 USPQ 177, 179 (BdPatApp&Int 1969) and *In re Dulberg*, 129 USPQ 348, 349; 289 F.2d 522 (CCPA 1961)

In response to applicant's arguments **(3)** & **(5)**, it should be noted that KSR forecloses Applicant's arguments requiring a specific teaching, suggestion or motivation to combine the references since the intended functions of the references have not been changed and the combination would yield predictable results. Therefore, one of ordinary skill in the art would look to Wright (US 2001/0027449 A1) to enhance the system of

Schmitz (US 6,078,908). The fact that Applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would other wise be obvious. See Ex parte Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

In response to applicant's argument **(4)**, Wright (US 2001/0027449 A1) teaches the establishment of a payment structure. "As one skilled in the art will appreciate, the invention disclosed herein contemplates embodiments and modifications, including the following. In one embodiment, the IICSP acts as financial intermediary between the consumer and a service provider by including one or more software components to effect payment charging and collection. For example, the PC software component gathers credit or debit card information from the consumer and submits the same to the proper payment processing centers to process the charge at the end of the billing period for the consumer. (Wright US 2001/0027449 A1 ¶ [0045]) As noted in claim 13 above, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a payment framework as taught by Wright (US 2001/0027449 A1) in the system of Schmitz US 6,078,908, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald C. Vizvary whose telephone number is 571-270-3268. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ella Colbert can be reached on 571-272-6741. The fax phone number for the organization where this application or proceeding is assigned is 571-270-4268.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/
Primary Examiner, Art Unit 3696

Gerald Vizvary
Patent Examiner, A.U. 3696
September 22, 2008